## UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:06CV309-3-MU 3:03CR112-3-MU

DONOVAN ANTHONY STAFFORD,	)
Petitioner,	)
v.	ORDER ORDER
UNITED STATES OF AMERICA,	)
Respondent.	)
	)

**THIS MATTER** is before this Court on the Petitioner's "Motion For An Order To Require Respondent To Reply To Petitioner's Amended Petition And To Stay A Response By Petitioner Until Such Reply Is Filed" (Document No. 16.)

A review of the record reveals that Petitioner filed a 28 U.S.C. § 2255 Petition on July 27, 2006. By Order dated August 3, 2006, this Court directed the Government to file a response to Petitioner's Petition. On August 12, 2006 the Government filed a Motion for an Extension of Time to respond to Petitioner's Petition which this Court granted (Document No. 5.) The Government then filed its Answer and Motion for Summary Judgment on October 12, 2006 (Document Numbers 6 and 7.) The Court then directed the Petitioner to file a response to the Government's Motion for Summary Judgment (Document No 8.) Petition twice sought extensions of time to file a response (Document Numbers 12 and 14) and each time the Court granted such requests (Document Numbers 13 and 15.)

By the instant Motion, Petitioner asks this Court to direct the Government to respond to his Motion to Amend before he should be required to respond to the Government's Motion for Summary Judgment. However, the Court has reviewed the record and the docket in this case and there is no record of a motion to amend. There is no indication that Petitioner ever filed such a motion in this Court. Furthermore, the Petition is advised that Rule 15 of the Federal Rules of Civil Procedure provides, "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served .... Otherwise a party may amend the party's pleading only be leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Here, a responsive pleading has been filed in this Court since October 12, 2006. Therefore, Petitioner should not assume that any motion to amend would granted as a matter of course.

The Court has no record of Petitioner filing a Motion to Amend on October 26, 2006. As such, the instant motion is denied and Petitioner is directed to file a response to the Government's Motion for Summary Judgment as outlined in this Court's previous Order granting Petitioner a second extension of time (Document No. 15.)

## ORDER

## THEREFORE, IT IS HEREBY ORDERED that:

- 1. Petitioner's Motion (Document No. 16) is DENIED.
- 2. The Clerk is directed to send Petitioner a current docket sheet along with a copy of this Order.
- 3. Petitioner is directed to file a response to the Government's Motion for Summary Judgment as outlined in this Court's previous Order granting Petitioner a second extension

of time (Document No. 15.)

## SO ORDERED.

Signed: December 1, 2006

Graham C. Mullen United States District Judge